

In addition, by letter dated October 24, 2000, claimant argues that all the issues presented by the respondent and its insurance carriers are now moot because subsequent to the filing of this appeal claimant received "all of the compensation ordered paid; as well as all of the penalties ordered paid by Judge Avery". The Board, however, did not receive any acquiescence or reply to that letter from the other parties.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

K.S.A. 44-512a provides for a civil penalty to be set by the Administrative Law Judge when there has been a failure to pay compensation when due. Under subsection (a) it is clear that this penalties statute takes effect only when "compensation . . . which has been awarded under the workers compensation act, is not paid when due."

A review of the administrative file shows that there has not been an award of either permanent partial disability compensation or temporary total disability compensation in Docket No. 255,564. Accordingly, penalties cannot be imposed. It appears that the ALJ intended for his order for penalties to be in Docket No. 233,493, which involves the same claimant and respondent, rather than in Docket No. 255,564.

It is noted that the order is for respondent to pay temporary total disability compensation in the amount of \$3,086.53, but claimant's June 22, 2000 demand letter alleged that only \$344.53 in temporary total disability compensation was due. In addition, the order assesses a penalty for unpaid temporary total disability compensation, but at page 13 of the transcript of the August 15, 2000 Post-Award Hearing in Docket No. 233,493, Judge Avery specifically asked claimant's counsel whether he was seeking penalties on the alleged failure to pay temporary total disability compensation when due and claimant's counsel answered that he was not.

JUDGE AVERY: And you're just seeking payment of temporary total and penalties on the permanent?

MR. MILLER: That's correct, Your Honor.

The Board concludes that the orders for penalties should be reversed and remanded to Judge Avery for further proceedings and orders, including a determination of whether there remains an issue in controversy given the representations made by claimant in her attorney's October 24, 2000 letter.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the August 25, 2000 Order and the August 30, 2000 Nunc Pro Tunc Order entered by Administrative Law Judge Brad E. Avery should be, and are hereby, reversed and remanded.

IT IS SO ORDERED.

Dated this ____ day of December 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Chris Miller, Lawrence, KS
Donald J. Fritschie, Overland Park, KS
Kip A. Kubin, Overland Park, KS
James K. Blickhan, Overland Park, KS
John B. Rathmel, Overland Park, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director